

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
LELCHOOK, et al., : 16-cv-07078-ILG-RLM  
Plaintiffs, :  
 :  
- versus - : U.S. Courthouse  
 : Brooklyn, New York  
 :  
ISLAMIC REPUBLIC OF IRAN, :  
et al., :  
Defendants : August 10, 2018  
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TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE  
BEFORE THE HONORABLE ROANNE L. MANN  
UNITED STATES MAGISTRATE JUDGE

**A P P E A R A N C E S:**

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1 THE COURT: Counsel, this is Judge Mann on the  
2 line.

3 MR. TOLCHIN: Yes, hi.

4 MR. FREY: Hi, Judge.

5 THE COURT: I'm conducting a telephonic hearing  
6 in Lelchook v. the Islamic Republic of Iran, et al., 16-  
7 cv-7078.

8 Do I have plaintiff's counsel on the line?

9 MR. TOLCHIN: Yes, you do, your Honor. Robert  
10 Tolchin. Are we on the record?

11 THE COURT: We are.

12 MR. TOLCHIN: Okay, thank you.

13 THE COURT: Mr. Tolchin, anyone else for  
14 plaintiffs?

15 MR. TOLCHIN: No, just me.

16 THE COURT: And for the defendant, Bank Saderat  
17 PLC.

18 MR. FREY: Correct, Jeremy Frey.

19 THE COURT: All right. Thank you both for  
20 making yourselves available on short notice to the Court.

21 Mr. Tolchin, I assume that you have seen the  
22 defense counsel's motion to withdraw which was filed  
23 after the Court had set up this hearing.

24 MR. TOLCHIN: Yes, I quickly read it.

25 THE COURT: And you previously had asked for, I

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1 believe it was four days in which to respond.

2 MR. TOLCHIN: I believe I said four business  
3 days but, yes.

4 THE COURT: All right. Before I rule on that,  
5 I would like a little more information about the status  
6 of not only this proceeding but other related  
7 proceedings.

8 Mr. Tolchin, has any -- I take it the mandate  
9 hasn't issued from the D.C. circuit, so that the cases  
10 have not been returned to the district court in D.C.?

11 MR. TOLCHIN: Your Honor, I think that is  
12 correct, but I don't -- I wouldn't want to make a  
13 representation as to whether the mandate has or has not  
14 issued as of this moment without checking the docket.

15 THE COURT: And since you originally had a case  
16 that was filed in D.C. that was dismissed on the basis of  
17 the now reversed decision in Kaplan (ph.), what is -- do  
18 you have any intention with respect to whether or not you  
19 will be seeking to resurrect that case?

20 MR. TOLCHIN: To resurrect the actual case  
21 where we won the appeal or are you talking about a  
22 different case?

23 THE COURT: No, I am talking about the -- I  
24 should have been more explicit, the Lelchook case.

25 MR. TOLCHIN: No, we definitely will seek to

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1 resurrect that in some form. We've been debating  
2 internally what's the best vehicle for that but we're  
3 certainly not walking away from it.

4 THE COURT: Well, you say in some form, I am  
5 trying to get a sense of whether or not this case is  
6 going to remain in this court, whether it's going to be  
7 pursued in D.C. or some other district because the  
8 Lelchooks have a similar case pending in the Southern  
9 District of New York, is that correct?

10 MR. TOLCHIN: Your Honor, let me just jump back  
11 to what you asked me a moment, while you were talking I  
12 pulled up the docket and there was an order there saying  
13 that the Court withhold issuing the mandate until seven  
14 days after disposition of any timely petition from the  
15 hearing. That was a July 20th order. So I guess they're  
16 waiting out the times for somebody to petition for a  
17 hearing, which I guess is imminent.

18 All right, but the Lelchooks, if I recall  
19 correctly, they have a case perhaps against different  
20 defendants pending in the Southern District of New York.

21 MR. TOLCHIN: They don't have anything pending.

22 THE COURT: All right. Then I misunderstood.

23 MR. TOLCHIN: They don't have any case pending  
24 right now. There was a case that was dismissed which  
25 could be resurrected but not something pending.

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1 THE COURT: Well, then let's focus on the  
2 Eastern District of New York case and the D.C. case which  
3 really are the same case. At oral argument a year ago, I  
4 had asked if Kaplan were reversed on appeal, would you be  
5 pursuing the case in D.C. and you said that if Kaplan  
6 were reversed on appeal, you would imagine you would then  
7 go back to Judge Lambert and say your order in Lelchook  
8 relied on Kaplan. Kaplan has now been reversed, so let's  
9 revisit the cases.

10 Has a decision been made as to whether or not  
11 this case is going to proceed in the Eastern District of  
12 New York?

13 MR. TOLCHIN: If this case against Bank Saderat  
14 is certainly going to proceed.

15 THE COURT: Was Bank Saderat a defendant in  
16 D.C.?

17 MR. TOLCHIN: Yes, but they didn't answer.  
18 That was the whole issue. They were kind of a defendant.

19 THE COURT: All right Mr. Frey, during our  
20 oral argument, after your client had prevailed in the  
21 district court in D.C., you were relying very heavily on  
22 the district court's decision in that case and indeed,  
23 you've said there's already been a ruling in this case  
24 with respect to these plaintiffs that act of war governs  
25 this cause of action.

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1           This case has already been dismissed, not once  
2 actually but twice in the D.C. circuit. So you were  
3 treating this as the same case as in D.C. Now the  
4 district court's decision has been reversed, is the  
5 position the same?

6           MR. FREY: I have no reason to think it is any  
7 different.

8           MR. TOLCHIN: Judge, Robert Tolchin, if I may  
9 jump in for one second. There's a big difference. It's  
10 not the same case. Lelchook is not a party in D.C. I  
11 mean it may have similar facts or similar occurrences but  
12 Lelchook is not in that case.

13           THE COURT: I thought Lelchook was a plaintiff  
14 in a companion case that Judge Lambert sua sponte  
15 dismissed based on --

16           MR. TOLCHIN: No.

17           THE COURT: -- Kaplan.

18           MR. TOLCHIN: No, that was --

19           MR. FREY: Yes, that's correct, your Honor.

20           MR. TOLCHIN: If that is correct, then it's  
21 more than I remember.

22           MR. FREY: Yes, it's correct.

23           THE COURT: Well, I must say that based on what  
24 has transpired in D.C., if this case were to proceed in  
25 this district, I would be inclined to grant the motion

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1 for discovery regarding personal jurisdiction.

2 But now the intervening event is defendant's  
3 motion to withdraw. The motion indicates that the client  
4 has discharged Mr. Frey and his firm and has advised that  
5 it does not intend to participate in the proceedings in  
6 the above case.

7 So do I understand correctly that Mr. Frey,  
8 that the bank will be defaulting?

9 MR. FREY: I think to the extent you're raising  
10 any potential remedy that might be available in the event  
11 it does not further -- it takes no further action which  
12 is my understanding that it will be taking no further  
13 action, there could be a variety of results. So it's  
14 certainly a default is among those that I think the law  
15 provides.

16 MR. TOLCHIN: Judge, if I may, while we were  
17 talking, I checked and I want to confirm to you that  
18 there was a case, Ester Lelchhook v. Central Bank of Iran,  
19 et al., which was dismissed without prejudice in  
20 Washington -- in D.C.

21 THE COURT: I didn't remember that it was  
22 without prejudice but in any event --

23 MR. TOLCHIN: It was without -- it was  
24 dismissed because of a lengthy delay without the  
25 defendants being served.

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1 MR. FREY: It was dismissed based on Kaplan.

2 THE COURT: Well, we don't need to resolve that  
3 now and in any event, that is a decision that will have  
4 to be made, presumably in another forum if that case is  
5 going to proceed.

6 But I want to get back to my inquiry of Mr.  
7 Frey, the fact that the bank has discharged counsel. I  
8 take it you have no reason to believe that they're not  
9 seeking to dismiss you and file a substitution of counsel  
10 or be afforded a brief period of time to retain new  
11 counsel. Your understanding is they've discharged your  
12 firm because they do not intend to proceed any further,  
13 correct?

14 MR. FREY: Precisely, your Honor. Correct.

15 THE COURT: And I want to make sure that they  
16 understand that if I were to grant the motion, that they  
17 would not in any event, be permitted to proceed without  
18 counsel in federal court. That, in and of itself, would  
19 be a basis for entering a default judgment and I further  
20 want to make sure that they understand that under Second  
21 Circuit case law, if they default, even though they may  
22 have raised an issue of lack of personal jurisdiction,  
23 that in this circuit, that could be deemed a forfeiture  
24 of any defense based on personal jurisdiction.

25 So I want to make sure that they understand



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1 that and my preference would be to communicate with the  
2 client, so that the client understands the ramifications  
3 of discharging counsel and/or defaulting.

4 MR. FREY: Uh-hum.

5 THE COURT: So I take it you do not -- your  
6 client does not -- in the United States, is it possible  
7 to arrange a telephonic hearing in which your client will  
8 participate?

9 MR. FREY: So, your Honor, if you want to give  
10 me some time, considering that it's in August, I will be  
11 happy to inquire and revert on that issue.

12 THE COURT: All right. How much time do you  
13 need for that?

14 MR. FREY: Well, let's plan that we should get  
15 back to you no later than next Friday.

16 THE COURT: All right. And Mr. Tolchin, you  
17 had asked for, as you said now, four business days to  
18 respond. So that would be next Thursday.

19 MR. TOLCHIN: That would be correct, yes.

20 THE COURT: All right. So I will give you the  
21 time that you need. You had -- without precluding you  
22 from raising other issues, you had indicated in  
23 requesting the four days that if the motion to withdraw  
24 were granted, you would want that to be with certain  
25 conditions attached. Do you want to share what you had

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1 in mind?

2 MR. TOLCHIN: Well, one of them we're concerned  
3 about not being able to -- not having a place to serve  
4 any orders or judgments that might flow from this case.  
5 You know, if they are discharged as their attorney, we  
6 feel that it ought to be conditional on designating  
7 somebody or somewhere as to the address where any orders  
8 or anything that needs to be served can be sent and  
9 indeed received.

10 Serving things on Irani entities in Iran, is  
11 extraordinarily frustrating. They have to become adept  
12 at refusing delivery of DHL and FedEx packages  
13 (indiscernible) legal. I believe they usually come back  
14 to me having been opened and retaped. So they open it  
15 and look inside and say oh, we refuse and send it back  
16 (indiscernible).

17 It could be that Mr. Frey might be the -- you  
18 know, might have a residual role in the case of being the  
19 person who receives documents and forwards them onto his  
20 former clients. It just doesn't -- you know, we are

21 But what sit with irony with us is that all  
22 these years, the defendants have been trying to get this  
23 case dismissed through various motions and argument and  
24 if they had been dismissed, that would have been it. Our  
25 clients would have been (indiscernible), it would have

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1 been binding.

2 Now they are saying okay, we've played so far  
3 but now we're going to take our marbles and go home and  
4 we don't want to be in the position where this far down  
5 the road, we can't finality ourselves because it's hard  
6 or it's difficult to serve papers on them. That's one  
7 main -- major condition that we had internally been  
8 discussing.

9 THE COURT: Anything else --

10 MR. TOLCHIN: Quite often -- the other thing is  
11 that often when attorneys are discharges, the cases is  
12 stayed and they're given an opportunity to find another  
13 lawyer but that really wouldn't be appropriate in this  
14 situation at all because let's just say that they don't  
15 want to continue, not that they're looking for another  
16 lawyer.

17 THE COURT: Well, and that was something that I  
18 already addressed with Mr. Frey and it does not appear  
19 that the client will be seeking to bring in new counsel.  
20 The client is -- to the extent it doesn't have a change  
21 of heart is at you put it, taking its marbles and going  
22 home.

23 And while I said that I believe in light of the  
24 case law both in the D.C. circuit, as well as Judge  
25 Pollak's report and recommendation in the Freeman case

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1 pending in this district, that I would at this point be  
2 prepared to grant the motion for jurisdictional discovery  
3 but it seems to me, it may be unnecessary if we're going  
4 to be faced with a default situation and a forfeiture of  
5 any defense based on lack of personal jurisdiction.

6 So Mr. Frey, is there anything you want to say  
7 in response to Mr. Tolchin's concern about not having  
8 someone on whom to serve orders and judgment?

9 MR. FREY: Judge, honestly I feel constrained  
10 because I am without authority. So I think the answer  
11 must be no.

12 THE COURT: I'm sorry, the answer is no you  
13 don't -- you're not aware of any such --

14 MR. FREY: No, the answer is no, I am  
15 constrained in making a response.

16 THE COURT: Well, it is something that I think  
17 ought to be addressed. There may be other issues that  
18 Mr. Tolchin will raise in his submission to the Court on  
19 Thursday. And I would urge you to -- Mr. Tolchin, to get  
20 that in as soon as possible, so that Mr. Frey can discuss  
21 its contents with the client but normally, if an attorney  
22 makes a motion to withdraw and assume a situation where  
23 we're dealing with an individual defendant, as opposed to  
24 an entity, the Court would insist that if -- that there  
25 be -- that the withdrawing attorney provide the Court

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1 with information, so that the client can be contacted  
2 directly.

3 This is not a ruling that I am making now but I  
4 certainly do share Mr. Tolchin's concern. So it's  
5 something you should discuss with your client.

6 All right. Is there anything else?

7 MR. TOLCHIN: No, thank you, your Honor.

8 THE COURT: Mr. Frey?

9 MR. FREY: From the defendant, your Honor.

10 THE COURT: Okay, thank you.

11 MR. TOLCHIN: Thank you for making time for us.

12 THE COURT: Yes, goodbye.

13 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 13th day of August, 2018.

  
Linda Ferrara

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